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No. 86-292

In the Supreme Court of the United States

OCTOBER TERM, 1986

STEVEN E. DONLEY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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This case presents a question identical to that presented by the petition in *Eggleston* v. *Commissioner*, No. 86-24, viz., whether the court of appeals erred in affirming the Tax Court's decision that a "pre-filing notification letter" sent to petitioner by the Commissioner was not a "notice of deficiency" as specified in Section 6212(a) of the Internal Revenue Code,[1]

[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended (the Code or I.R.C.).

and hence that the Tax Court under Section 6213(a) lacked jurisdiction to entertain his suit.

Petitioner here, like the petitioners in *Eggleston*, is an investor in a tax shelter known as the "Liberty Financial 1983 Government Securities Trading Strategy." Like the petitioners in *Eggleston*, petitioner here received a "pre-filing notification letter" from the Commissioner advising him that the IRS believed that the purported deductions or credits generated by the tax shelter were not allowable, that the IRS intended to review his returns to ascertain whether he had claimed any such deductions or credits, and that, if he had, his returns would be audited and such deductions or credits would be disallowed. Pet. App. 10a-12a. Petitioner here joined with the petitioners in *Eggleston* and with 107 other "Liberty Financial" investors who had received such letters in filing a consolidated petition to the Tax Court for redetermination of "deficiencies" allegedly asserted in those letters (Pet. App. 12a). The Tax Court granted the Commissioner's motion to dismiss the consolidated petition for lack of jurisdiction on the ground that the issuance of a "notice of deficiency" is a precondition to its jurisdiction and the pre-filing notification letters were not "notices of deficiency" (*id.* at 8a-22a; 84 T.C. 1308 (1985)). The court of appeals affirmed in a per curiam opinion (Pet. App. 1a-7a; 791 F.2d 383).

We have thoroughly discussed the issue presented by the instant petition in our memorandum in opposition in *Eggleston*, No. 86-24. We will not repeat that discussion here. As we showed there, the decision below is correct, petitioner's arguments are wholly insubstantial, and the courts of appeals have unanimously rejected them.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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